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RECORD AND BRIEFS

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No. 141, Original

In the Supreme Court of the United States

STATE OF TEXAS, PLAINTIFF

v.

STATE OF NEW MEXICO

AND

STATE OF COLORADO

ON BILL OF COMPLAINT

REPLY MEMORANDUM FOR THE UNITED STATES IN SUPPORT OF MOTION TO INTERVENE AS A PLAINTIFF

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On February 27, 2014, the United States filed a motion for leave to intervene in this original action as a plaintiff, a proposed complaint in intervention, and a memorandum in support of the motion. In those documents, the United States describes several distinct federal interests that are at stake in this dispute over the interpretation of the Rio Grande Compact (Compact): (1) the operation of the Rio Grande Project (Project) by the Bureau of Reclamation, including how diversion allocations for Project users are calculated; (2) the delivery of water to Project beneficiaries without interception or interference by New Mexico water users who do not have contracts with the Secretary of the Interior for delivery of Project water, or who use Project water in excess of contractual amounts; and

(3) the delivery of water to Mexico without such interception or interference by New Mexico water users pursuant to the Convention Between the United States and Mexico Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, May 21, 1906, U.S.-Mex., 34 Stat. 2953. See U.S. Mem. in Support 4-10. The United States explains in its memorandum in support of its motion for leave to intervene that the Compact incorporates provisions governing the Project and deliveries to Mexico, and the interests of the United States therefore are directly involved in the questions of Compact interpretation in this case. *Id.* at 9-10.

The United States further explains in its memorandum that New Mexico has asserted that the United States is an indispensable party to this action. Granting the United States' motion for leave to intervene will eliminate that question and permit a judicial resolution of the parties' dispute over the interpretation of the Compact. See U.S. Compl. para 16; U.S. Mem. in Support 10.

In response to the United States' motion for leave to intervene, New Mexico states that it does not oppose the motion "insofar as the United States seeks leave to become a party to this proceeding on the existing pleadings," but New Mexico makes three "object[ions]" to the United States' proposed complaint in intervention.* New Mexico contends: (1) that

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* Although the Federal Rules of Civil Procedure are not strictly applicable in original cases, they provide a guide to the Court's proceedings. See Sup. Ct. R. 17.2. Under Federal Rule of Civil Procedure 24(c), a motion to intervene "must * * * be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). It has thus been the

the United States' interpretation of federal reclamation law is incorrect; (2) that the complaint in intervention should be dismissed if the complaint filed by Texas is dismissed; and (3) that the complaint in intervention fails to state a claim "because it misconstrues the respective rights and obligations of the Bureau of Reclamation and the states under the Reclamation Act." N.M. Resp. 1-3.

Those objections are not appropriately resolved in connection with the United States' motion for leave to intervene. New Mexico does not contest that "distinctively federal interests, best presented by the United States itself, are at stake" in this Compact dispute. *Maryland* v. *Louisiana*, 451 U.S. 725, 745 n.21 (1981). Intervention is thus warranted based on the uncontested federal interests outlined in the United States' memorandum. As New Mexico appears to acknowledge by seeking leave to file a motion to dismiss the United States' complaint in intervention as well as Texas's complaint (see N.M. Resp. 3), the issues that New Mexico raises in its response should be raised in a motion to dismiss the United States' complaint in intervention, or later in these proceedings, if the United States is permitted to intervene.

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practice of the United States, when seeking leave to intervene as a plaintiff in an original action, to include a proposed complaint in intervention with its motion.

CONCLUSION

The motion of the United States for leave to intervene as a plaintiff should be granted.

Respectfully submitted.

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